

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

SOUTHWEST
EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BPED-890313MD

MM Docket No. 93-4

SEP 2 9 10 AM '93

DIST. 1-80-27

For Construction Permit for a
New Noncommercial Educational FM
Station on Channel 290A at
Stanton, Texas

In re Applications of

ATKINS
BROADCASTING

File No. BRH-900327UP

FAMILY STATIONS, INC.
Assignor

and

File No. BAPED-891130HR

For Renewal of License of
Station KRGN(FM)
Amarillo, Texas

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.
Assignee

CAPROCK
EDUCATIONAL
BROADCASTING
FOUNDATION

File No. BRED-900327UQ

For Assignment of Construction
Permit for Noncommercial
Educational Station KBTT(FM)
Bridgeport, Texas

For Renewal of License of
Noncommercial Educational
Station KLMN(FM)
Amarillo, Texas

CAPROCK
EDUCATIONAL
BROADCASTING
FOUNDATION

File Nos. BMPED-890726IF
37 BLED-901210KD

For Modification of Construction
Permit and For License to Cover
Construction of Noncommercial
Educational Station KAMY(FM)
Lubbock, Texas

SOUTHWEST
EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BRED-900327UO

For Renewal of License of
Noncommercial Educational
Station KENT
Odessa, Texas

SOUTHWEST
EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BLED-910705KA

For License to Cover
Construction of Noncommercial
Educational Station KENT-FM
Odessa, Texas

SOUTHWEST
EDUCATIONAL MEDIA
FOUNDATION

File No. BLED-900226KA

For License to Cover
Construction of Noncommercial
Educational Station KOJO(FM),
Lake Charles, Louisiana

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 1993; Released: September 1, 1993

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority,¹ has before it a "Petition for Extraordinary Relief," filed May 3, 1993, and supplemented on June 23, 1993, by Atkins Broadcasting, Caprock Educational Broadcasting Foundation, Southwest Educational Media Foundation of Texas, Inc., and Southwest Educational Media Foundation (hereinafter "Atkins"). Atkins seeks permission to assign the license of Station KRGN(FM) to La Voz Del Salvacion ("La Voz"), and to assign the licenses of Stations KLMN(FM) and KENT and the permits of Stations KAMY(FM),² KENT(FM), and KOJO(FM) to Maranatha Radio, Inc. ("Maranatha").³ Atkins proposes to sell the stations to Maranatha for \$579,750, pursuant to the Commission's minority distress sale policy.⁴ In addition, Atkins requests dismissal of SEMFOT's application for a new noncommercial educational FM station in Stanton and the application to assign to SEMFOT the permit for noncommercial educational station KBTT(FM), Bridgeport, Texas.

2. By *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, 8 FCC Rcd 674 (1993) ("HDO"), the Commission designated for hearing the above-captioned applications for alleged unauthorized construction and related misrepresentations. On March 30, 1993, Atkins filed a "Petition for Stay of Proceeding to Implement Distress Sale" to allow him time to assign the licenses and permits consistent with the minority distress sale policy. By *Order*, FCC 93M-137, released April 1, 1993, the Presiding Judge granted Atkins' petition, provided that he filed a petition for extraordinary relief together with applications for assignments of the affected licenses and petitions. On May 3, 1993, Atkins filed the required petition and applications. By *Order*, FCC 93M-278, released May 19, 1993, the Presiding Judge stayed the proceeding to allow the Bureau time to rule on Atkins' distress sale showing.

3. To qualify for distress sale relief, a licensee must show that the hearing has not yet commenced, that there is significant minority ownership in the proposed transferee, and that the station will be sold at a maximum of 75 percent of the fair market value as of the date of designation for hearing. *Lee Broadcasting Corp.*, 76 FCC 2d 462 (1980); *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978); and *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). Thus, the buyer and the seller each retain an appraiser and each submit an appraisal of the fair market value of the station as of the date on which the license was designated for hearing. If the difference between the two appraisals is more than five percent of the average of the appraisals, the parties must jointly choose and retain a third appraiser. Then, the average of the three appraisals will constitute the station's fair market value. *Grayson Enterprises, Inc.*, 77 FCC 2d 156 (1980), as clarified by *Patrick Henry*, 79 FCC 2d 393 (1980). Finally, the appraisals must contain specific documentation and supporting computations. *Northland Television, Inc.*, 72 FCC 2d 51, 56 (1979), as further clarified in *Grayson*, 77 FCC 2d at 164.

4. The parties have met the threshold criteria for relief by distress sale. First, the hearing has not yet commenced. Second, Atkins has established that the proposed assignee, Maranatha, has significant minority ownership. Specifically, 100% of La Voz and two-thirds of Maranatha are owned by Jose Vega and Alex Ramirez, both of whom are Hispanic. Finally, the parties' methodology for determination of the stations' fair market value and establishment of the distress sale price substantially comports with the third Commission requirement.

5. With respect to the determination of the stations' fair market value, Atkins has submitted an appraisal for the stations by Jack Riley ("Riley"), an experienced broadcast broker and appraiser. To determine the fair market value of the stations, Riley considered replacement costs of station equipment for the noncommercial stations, sale prices of other stations in Amarillo and Odessa during the past five years,⁵ the value of the Odessa real estate, and capitalized earnings. For the six stations, Riley determined that their fair market value was \$1,208,000.

6. Maranatha has submitted an appraisal of the stations from the Dora-Clayton Agency, Inc., ("DCA") an experienced brokerage and appraisal firm. DCA, like Riley, considered replacement costs for the equipment of the noncommercial stations, recent sale prices of comparable commercial properties for KRGN and KENT, and the value of the Odessa real estate. However, DCA concluded that the fair market value of Atkins' stations was only \$998,000.

7. The proposed sale price of \$579,750 is less than 60 percent of the lower of the stations' appraisals.⁶ Thus, the parties have established that the stations will be conveyed

¹ See *Faith Center, Inc.*, 54 RR 2d 1286, 1287 n.11 (1983); *Minority Ownership in Broadcasting*, 92 FCC 2d 849, 859 (1982).

² By letter dated June 2, 1993, Brian Henegar submitted an informal objection to the assignment of the permit for Station KAMY, Lubbock. Henegar alleges that he requested a copy of the assignment application but was told he needed to contact Atkins' office in Bedford, Texas, or the Commission in order to obtain a copy. By letter dated June 4, 1993, Atkins explained that Henegar had called the station and asked that a copy of the application be mailed to him. Instead, station personnel called Henegar and told him he could come to the station to look at the application. Atkins further relates that Henegar did, in fact,

view a copy of the application on June 4. Atkins' version of these events is not disputed by Henegar. Accordingly, we conclude that no violation of the public inspection file rule (Section 73.3527 of the Commission's Rules) occurred and that the informal objection should be denied.

³ La Voz and Maranatha are controlled by the same persons. Hence, except where noted, we will refer to them collectively as Maranatha.

⁴ See discussion at para. 3, *infra*.

⁵ Although KENT is operated as a noncommercial station, it may be operated as a commercial station.

⁶ Ordinarily, where the difference between the appraisals is

at a price which is well below the 75 percent maximum permitted by the Commission's minority distress sale policy.

8. As a final matter, the parties have disclosed all the facts and circumstances regarding the distress sale agreement, including the negotiations relating thereto and the consideration to be exchanged. *KND Corp.*, 48 RR 2d 631, 634 (1980). In addition, the assignment applications have been processed and the assignees have been found to be fully qualified to be Commission licensees.⁷ Therefore, the Petition for Extraordinary Relief, as supplemented, the renewal applications for Stations KRGN and KENT, and the assignment applications for the stations to Maranatha shall be granted, subject to the condition that the contemplated assignments are, in fact, consummated within ninety (90) days of the release date of this *Memorandum Opinion and Order*. If the assignments are not consummated within the ninety (90) days, however, this proceeding will return to hearing status and the hearing proceedings will resume in accordance with the *HDO. Radio Station WTJH*, 97 FCC 2d 415, 422 (MMB 1984).

9. Accordingly, IT IS ORDERED that, subject to the condition imposed in paragraph 8 above, Atkins' "Petition for Extraordinary Relief," as supplemented, IS GRANTED; the informal objection to the application to assign the permit of Station KAMY(FM), Lubbock, Texas, IS DENIED; the applications for renewal of license of Station KRGN(FM) (File No. BRH-900327UP), Station KLMN(FM) (File No. BRED-900327UQ), and Station KENT (File No. BRED-900327UO) ARE GRANTED; the applications for assignment of license of Station KRGN(FM) (File No. BALH-930504GG), Station KLMN(FM) (File No. BALE-930503GG), and Station KENT (File No. BAL-930503EA), and the applications for assignment of the permits of Station KAMY(FM) (File No. BAPED-930503GH), Station KENT-FM (File No. BAPED-930503EB), and Station KOJO(FM) (File No. BAPED-930503GE) ARE GRANTED; the application of SEMFOT for a construction permit for a new station in Stanton, Texas (File No. BPED-890313MD) IS DISMISSED; the application to assign the permit of Station KBTT(FM) (File No. BAPED-891130HR) IS DISMISSED; and this proceeding IS TERMINATED.⁸

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

more than five percent of the average of the appraisals, as it is here, a third appraisal must be submitted. However, where, as here, the sale price does not even approach the 75 percent maximum set by the Commission, no useful purpose would be served by requiring the parties to obtain a third appraisal. *KOZN FM Stereo 99, Ltd.*, 3 FCC Rcd 877, 878 n.3 (MMB 1988).

⁷ The assignment applications were accepted for filing by Pub-

lic Notices, which were released May 11, 13 and 17, 1993. The only challenge to the applications was an informal objection against the KAMY assignment, which we have concluded does not warrant further action. (See n.2, *supra*.)

⁸ *Faith Center, Inc.*, 54 RR 2d at 1287 n.11; *Minority Ownership in Broadcasting*, 92 FCC 2d at 859.